

Copyright Resource Guide

From the Music Publishers Association of the United States

Note: This presentation does not constitute legal advice.
For legal advice, please consult with an intellectual property attorney.

Key Terms:

- **Intellectual Property:** Creations of the mind which includes inventions, literary works, artistic works, and symbols, names, and images used in commerce. Intellectual property can be divided into two categories:
 1. **industrial property** - used in industry, including patents, trademarks, industrial designs, and geographical locations;
 2. **copyright** - covers literary works, films, music, artistic works, and architectural designs.
- **Berne Convention for the Protection of Literary and Artistic Works:** An international treaty first adopted in 1886 to afford reciprocal rights and protections under copyright law to authors across countries which became signatories to the treaty, now encompassing over 100 countries, including the US.
- **World Intellectual Property Organization (WIPO):** Established in 1970, this international organization exists to promote innovation and creativity through a balanced and effective international intellectual property system.
- **Copyright Laws:** Grant authors, artists, and other creators limited protection for their original creations. The copyright holder has **exclusive** rights set forth in the U.S. Code Title 17, which include the right to:
 - Reproduce the copyrighted work in copies or phonorecords (including print, audio and video)
 - Distribute copies of the copyrighted work to the public by sale or other transfer of ownership or by rental, lease or lending
 - Perform or display the copyrighted work publicly
 - Prepare derivative works based on the copyrighted work (arrangements, translations, adaptations, etc.)
- **Public Domain:** Works that are not covered under copyright law, and can therefore be used by the public in any way. In the US works published prior to 1923 are in the public domain.
- **Fair Use:** “Fair Use” is a legal concept which means that an unauthorized use of a copyrighted work which would otherwise be an infringement of copyright will not be considered infringement because it is a use to which the copyright owner should not object, either because the use does not impair the economic or artistic value of the work, or because it is one of overriding social value. Four factors used by judges in determining fair use are:
 1. Purpose and character of the use
 2. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
 3. Nature of the copyrighted work
 4. Effect of the use upon the potential market for or value of the copyright work



- **Derivative Work:** An arrangement or adaptation of an existing copyrighted work. A direct license is required to create a derivative work of a preexisting work. These can be obtained by contacting the publisher or copyright holder directly.
- **Performance License:** License required to perform or publicly display a work outside of an educational setting. These can be obtained through Performances Rights Organizations (PROs) such as ASCAP, BMI, and SESAC, and are purchased by song or through a blanket license.
- **Mechanical License:** License required to create an audio recording of a copyrighted work. These may be purchased directly from the copyright holder or publisher, or through the Harry Fox Agency.
- **Synchronization License:** License required to create a video recording of a copyrighted work. These must be obtained directly from the copyright holder.

Topics:

Printed Copies:

What you MUST do:

- Provide properly acquired music for every person using the material
- Ask permission for all other copies
- Copies must contain copyright notice
- Destroy copies made in an emergency situation for an imminent performance, and replace with properly acquired copies
- Copy only excerpts of a work for academic purposes that cannot comprise the whole work or constitute a 'performable unit'
- For score study purposes a director may allow a single copy of a score

What you CANNOT do:

- Copy works to avoid purchase
- Exceed one copy per pupil for legally obtained copies of entire works
- Copy music for any kind of performance, except with the emergency exception whereby purchased editions follow and copies are destroyed.
- Copy works to create, replace, or substitute for anthologies, compilations or collective works
- Copy from works intended to be consumable in the course of study or teaching, such as workbooks, standardized tests and answer sheets
- Charge customers beyond the actual cost involved in making copies as permitted

Derivative Works (Arrangements):

- Music teachers may edit or simplify purchased, printed copies, provided that the fundamental character of the work is not distorted, or the lyrics, if any, are not altered or lyrics added if none exist.
- Obtain a direct license to make substantial changes to or arrangements based off a copyrighted work.

Performances:



- Buying sheet music does not grant the purchaser the right to perform it publicly. The good news is that in most cases the performance of music in educational settings constitutes Fair Use, so it's not something teachers need to worry about in the course of their day to day teaching activities.
- A Performance license is needed if you are performing outside of the "educational setting." This includes performing at the mall, or a marching band halftime show. Often, the venue will have blanket performance licenses in place with each of the performing rights societies (ASCAP, BMI and SESAC in the US) which aggregate rights on behalf of authors and music publishers for purposes of licensing performance venues. It is your responsibility to confirm that the necessary performance licenses are in place prior to organizing a performance at a given venue. Organizations that promote large events such as Choral Festivals or Marching Band Cavalcades should be the responsible party for acquiring the necessary licenses, and while they would likely be the initial target of any lawsuit, the performing organizations (for example, the choirs or marching bands participating in the events) would not be immune from liability in the event the rights are not secured. **Make sure that the organization, host or venue has the proper license.** Performances sponsored by NAFME are covered through a blanket agreement with ASCAP and BMI.
- Each of the (PROs) performances rights organizations have resources on their websites to search titles to see if they are licensed under the authority of the PROs, and each allows potential licensees to apply for licenses in order to perform the works they represent. The cost to obtain these licenses is either by song or through a blanket license, and costs only a few cents per song. Again, these licenses only grant the right to put on nondramatic performances of copyrighted works in their respective repertoires. To record said performances, this requires a different license—namely, a mechanical license – which, can be acquired through the Harry Fox Agency.

Audio Recordings:

- Copyright law allows educators to make one recording for reference or study purposes.
- If you are making more than one 1 copy of a recording, you need a mechanical license. A mechanical license grants the right to reproduce and distribute copyrighted musical compositions (songs) on CDs, records, tapes, ringtones, permanent digital downloads, interactive streams and other digital configurations supporting various business models, including locker-based music services and bundled music offerings. If you want to record and distribute a song that you don't own or control, or if your business requires the distribution of music that was written by others, you need to obtain a mechanical license which can be acquired through the Harry Fox Agency.
- Distributing recordings to your students – even for free – is not allowed without a mechanical license. This includes CDs, or other physical recording, or downloads of music files. The good news is that mechanical rights are not expensive.

Video Recordings:

- Video use of a copyrighted work requires a synchronization license which you will need to obtain by contacting the publisher(s) directly. In the case of audiovisual recordings, you DO NOT get one reference recording of any kind. HOWEVER, some organizations offer Synchronization licenses which



permit an individual to make a video recording of their group's performance – such as a Choir competition, or a marching band festival – for reference or study, but these uses must first be cleared and permitted (with the proper credentials) by the festival's staff prior to the beginning of the event. Otherwise, all other videotaping is prohibited.

- 2 -Livestreaming is a public performance, and as you can see here, with the proper Performance Licenses in place, that is okay. Many universities have recently started livestreaming their concerts (which are given at the university) thanks to recent developments in technology which is permissible under blanket licenses from PROs. Interactive streaming of audio-only recordings where the user has the ability to control what they are playing implicates a mechanical right.

The Internet:

- The internet qualifies as distribution. Therefore, a mechanical license is required to post an audio recording and a synchronization license is required to post a video recording of a copyrighted work.
- Observe take-down notices from services such as YouTube if you accidentally post something unlawfully.
- Posting recordings (audio or video) to an educational website that is password protected for educational purposes is acceptable, as this falls under educational fair use, if all other fair use factors are observed.

Consequences:

According to Purdue University's Legal Assessment on Copyright Law, consequences of copyright infringement may include the following:

- **Cease and Desist Letter:** Letter from an intellectual property owner requesting to the infringer that alleged activity, such as copyright infringement, be stopped immediately.
- **Injunctions:** Copyright owners may bring civil suit against infringers for infringement of copyright under federal law with two likely outcomes, the first of which is an injunction. An injunction is an official court order to stop conducting infringing acts, including reproducing or distributing copyrighted materials. Failure to comply with an injunction can result in the arrest of copyright violators, as well as additional charges for contempt of court. The second possible outcome is an order providing for financial restitution to be paid by the infringer to the copyright owner.
- **Financial Restitution:** The amount of restitution or "damages" that can be awarded for copyright infringement depends on the value of the loss or harm suffered by the copyright owner whose work was infringed and the profits reaped by the infringer. If a copyright infringer's actions cause a copyright holder to lose a significant amount of income or suffer a damaged reputation, the amount of restitution can add up quickly. In addition, those who lose a court case are often responsible for paying court costs and attorney's fees. These expenses can add up over time in drawn-out court battles, increasing a copyright infringer's financial burden after losing a case.
- **Fines:** In addition to actual damages, in cases where an infringer acted willful the courts may impose substantial monetary penalties in the form of statutory damages or criminal fines. In the case of statutory damages, the court may increase its award of civil damages up to \$150,000. With respect to criminal liability for copyright infringement, courts determine fines based on the value of items in



question. Cases dealing with counterfeited or unlawfully reproduced materials valued at \$2,000 or more are viewed as more serious than violations involving illegal materials with a value less than \$2,000. In either case, defendants can be charged fines up to \$250,000 for each offense committed.

- **Prison Time:** The U.S. government takes certain types of copyright infringement seriously enough to impose prison time on first-time and repeat offenders. According to the U.S. Department of Justice, first-time offenders can serve up to five years in prison, while repeat violators can face an additional 10 years.



Permission and Licensing at a Glance

Copy Sheet Music

- Emergency only
 - Replace with purchased item
 - Destroy copies
- Academic Fair Use
 - Purpose and character
 - Amount in relation to the whole
 - Nature of the work
 - Effect of potential market or value
- Permission required from publisher**

Arrange

- May make small edits for simplification
- Do not add or alter lyrics
- Direct License from publisher** required to perform, distribute or monetize an arrangement
- Mechanical License** normally covers arrangements used for audio-only recordings

Record Audio

- You may make one recording for archival or educational use
- Internet distribution of audio-only recordings needs a Mechanical License
- Mechanical License** required from publisher or Harry Fox

Record Video

- NO archival or educational use copies permitted
- Internet distribution of video requires a Synchronization License
- Synchronization License** required directly from publisher

Perform

- Most performances in an educational setting constitute Fair Use
- Outside of an educational setting a performance license is required.
- Venues such as malls, stadiums, etc. may have blanket licenses
- Performers verify licensing is in place with the venue or acquire the license
- Performance License required from Performing Rights Org (BMI, ASCAP, SESAC)**

Perform Dramatic Works

- Includes musicals, opera, ballet, musical reviews, etc.
- Direct License required from publisher**



Additional Resources:

Copyright Organizations and the Law:

- U.S. Copyright Office: <https://www.copyright.gov/title17/>
- U.S. Constitution: <https://www.archives.gov/founding-docs/constitution-transcript#toc-section-8->
- U.S. Copyright Office Circular 21: <https://www.copyright.gov/circs/circ21.pdf>
- Berne Convention: http://www.wipo.int/treaties/en/text.jsp?file_id=283698
- World Intellectual Property Organization (WIPO):
http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf
- Music Publishers Association of the U.S. (MPA): <http://www.mpa.org/content/copyright-search>
- NAFME: <https://nafme.org/my-classroom/copyright/>
- Music for All:
<http://www.musicforall.org/resources/copyright/copyright-resources>
- Tresona: https://tresonamusic.groovehq.com/help_center

Public Domain:

- Library of Congress: <http://cocatalog.loc.gov>
- Cornell University: <https://copyright.cornell.edu/publicdomain>
- Public Domain Info: <http://www.pdinfo.com/index.php>
- NOLO on Public Domain: <https://www.nolo.com/legal-encyclopedia/works-public-domain-permission-29523.html>

Fair Use:

- Copyright Office Fair Use Index:
<https://www.copyright.gov/fair-use/more-info.html>
- University of Texas: <http://guides.lib.utexas.edu/copyright/fairuse>
- Cornell University: https://copyright.cornell.edu/sites/default/files/Fair_Use_Checklist.pdf
- Purdue University Copyright Office: <https://www.lib.purdue.edu/uco/CopyrightBasics/index.html>
- Stanford University:
<https://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/>

Forms and Permission:

- Lawrence University Permission Summary:
https://www.lawrence.edu/mfhe/www_core/Everyone/Copyright_Licensing_pointers.pdf
- University of Texas Permission Summary: <http://guides.lib.utexas.edu/copyright/permission>
- MPA Permission to Arrange Form Template:
<http://www.mpa.org/sites/mpa.org/files/Permission%20to%20Arrange.pdf>
- MPA Permission to Copy Out of Print Materials:
<http://www.mpa.org/sites/mpa.org/files/LIBRARY%20REQUISITION.pdf>



- MPA Reporting Copyright Violations: <http://www.mpa.org/sites/mpa.org/files/MPA%20Copyright%20Violation%20Form%202005.pdf>
- Stanford University on Website Permission: <https://fairuse.stanford.edu/overview/website-permissions/>
- Landmarks for Schools Permission Request Template: <http://www.landmark-project.com/permission1.php>
- Marching Band Arrangements: http://www.craigjordanmusic.com/CJM/Copyright_Info_files/Marching%20Band%20Step%20by%20Step.pdf
- Marching Band Licensing: <http://www.halftimemag.com/features/the-faqs-of-music-licensing.html>

Licensing Organizations:

- ASCAP: <https://www.ascap.com/>
- BMI: <https://www.bmi.com/>
- Harry Fox Agency: <https://www.harryfox.com/>
 - HFA Synchronization License: <http://www.songfile.com/esynch>
- SESAC: <https://www.sesac.com/>
- CopyCat Music Licensing LLC: <http://copycatlicensing.com/>
- For Musicals:
 - <http://www.musicals101.com/alphinde.htm>
 - <http://broadwaymusicalhome.com/production-rights.htm>
 - <http://www.mtishows.com/>

Books:

- Frankel, James. *The Teacher's Guide to Music, Media, and Copyright Law*. Hal Leonard Books, 2008.
- Stim, Richard. *Getting permission: Using and licensing copyright-protected materials online and off*. 6th edition. Nolo Press, 2010.
- Phillips, Pam and Andrew Surmani. *Copyright Handbook for Music Educators and Directors*. Alfred Music Publishing, 2017.



Videos:

- I Made It, Please Don't Steal It: <https://www.youtube.com/watch?v=L1ggGxmGffY&feature=youtu.be>
- Mark Davis: A Lecture on Teaching Copyright Law to Music Students: <https://www.youtube.com/watch?v=6fqDLx0jFF0>
- Understanding Copyright Law and Exclusive Rights: <https://www.youtube.com/watch?v=jrq2jIHiMWE>
- Berklee Online Open Mic: E. Michael Harrington on Copyright Law: <https://www.youtube.com/watch?v=TPdVnaZp5vl>
- EXCELCast: Copyright for Musicians with James Kendrick: <https://www.youtube.com/watch?v=3GNxwxoHA7o>

Copyright Courses:

(*Free!)

- Berklee Online: <https://online.berklee.edu/courses/copyright-law#!overview>
- Copyright Clearance Center: <http://www.copyright.com/learn/courses-programs/certificate-programs/>
- Coursera, Copyright for Educators and Librarians: <https://www.coursera.org/learn/copyright-for-education#>
- Cornell University: <https://copyright.cornell.edu/training>
- E-Tutorials: <http://www.copyrightlaws.com/copyrighteducationforlibrarians/>
- *Harvard Law School, CopyrightX: <http://online-learning.harvard.edu/course/copyrightx>
- Lynda Online, Richard Stim: <https://www.lynda.com/Richard-Stim/957364-1.html>
- MIT Introduction to Copyright Law: <https://ocw.mit.edu/courses/electrical-engineering-and-computer-science/6-912-introduction-to-copyright-law-january-iap-2006/index.htm>
- UC San Diego: <https://extension.ucsd.edu/courses-and-programs/intellectual-property>
- University of Texas at Austin: <https://professionaled.utexas.edu/intellectual-property-law-specialist-certificate-program>
- *University of Texas Copyright Crash Course: <http://guides.lib.utexas.edu/copyright>

Miscellaneous Resources:

- Circulars on various copyright topics: <https://www.copyright.gov/circls/>
- Copyright Navigator: <http://navigator.carolon.net/>
- Copyright and the Band Director: <http://mustech.net/2015/06/copyright-and-the-band-director-cbdw-handout/>
- Cornell University Copyright Decision Tree: https://copyright.cornell.edu/sites/default/files/Copyright_Decision_Tree.pdf
- MPA Additional Resources: <http://www.mpa.org/content/music-links>



- TMEA on Musical Arrangements:
https://www.tmea.org/assets/pdf/southwestern_musician/MusicalArrangementsCopyrightLaw_Jan2011.pdf

Credits:

Under direction of the Copyright Curriculum Committee Board of the Music Publishers Association of the United States, the following individuals contributed to this resource guide and accompanying media presentation:

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